



2023:DHC:8014-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 01.11.2023

% **W.P.(C) 11960/2023 and C.M. No. 46899/2023**

SUNIL YADAV

..... Petitioner

Through: Mr. Joydeep Sarma and Mr. Kaushal
Kapoor, Advocates.

versus

ARUNA ASAF ALI GOVERNMENT

HOSPITAL & ANR.

..... Respondent

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel with Ms. Mehak
Nakra, ASC (Civil), Mr. Abhishek
Khari and Ms. Disha Chaudhar,
Advocates for respondent No. 1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The Petitioner before this Court has filed the present writ petition for issuance of appropriate writ, order or direction, directing the Respondent to award the contract to the Petitioner as the he has emerged as the highest bidder in respect of the tender bearing No. GEM/2023/B/37/14515 dated 19.07.2023 (NIT) issued by Respondent No. 1 for running a food shop at the premises of Respondent No. 1 Hospital on outsourcing basis. As per Clause-



5 of the NIT, the contract was to be awarded to the highest bidder (H1). The relevant clause i.e. Clause-5 of Section-V of the NIT is reproduced as under:-

“5. Notification of Award

- 1. Aruna Asaf Ali Government Hospital will notify the successful bidder in writing or email, that its proposal has been accepted.*
- 2. The bidder quoting highest licence fee and who has been qualified in prequalification-cum technical bid shall be awarded the contract. (H1)*
- 3. The notification of award will constitute the formation of the contract/agreement. The vendor will have to submit the performance security money and make an agreement with the tender inviting authority within 14 days of letter of offer).”*

2. The counsel for the petitioner submits that he had submitted his bid in respect of the NIT on 29.07.2023 and was declared technically qualified on 21.08.2023 and thereafter was also declared as the highest bidder (H1). The Petitioner was the highest bidder, however, the Government E-Marketplace (GEM) Portal incorrectly reflected the Petitioner as L4 instead of H1. The Petitioner states that he immediately visited the office of Respondent No. 1 and brought to their notice that he cannot be indicated as L4 and he should be indicated H1 instead and that the work should be awarded in his favour.

3. This court, *vide* order dated 12.09.2023, had stayed the award of contract to the private respondent, in light of the fact that the petitioner was the H1 bidder.

4. A counter affidavit has been filed in the matter by Respondent No. 1 and the same makes it very clear that the Petitioner was certainly the H1 bidder in terms of the NIT. The Respondent No. 1 on affidavit has admitted that the contract was to be awarded to the H1 bidder, i.e., the bidder who



offers the highest amount of monthly rent among the bidders and it is an undisputed fact that the Petitioner has offered the highest amount in respect of the work in question. The Respondent No. 1 has admitted in their affidavit that the GEM Portal has inadvertently selected the L1 bidder instead of selecting the H1 bidder, as was required by Clause-5 of the Subject Tender.

5. In light of the undisputed fact that the Petitioner is an H1 bidder, and that the work contract must be awarded to the H1 bidder as per the tender conditions, the Respondents are directed to award the work to the Petitioner in terms of the NIT.

6. Learned counsel appearing on behalf of Respondent No. 1 was fair enough to state before this court that they will be awarding the work in question to the Petitioner within a period of two weeks from today.

7. The Respondent No. 2, GEM, is directed to make necessary corrections on the GEM Portal clarifying that the Petitioner is an H1 bidder in accordance with the terms and conditions of the NIT issued by the Respondent No 1.

8. With the aforesaid the petition stands allowed.

SATISH CHANDRA SHARMA, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 1, 2023/ V. Rawat

W.P.(C.) No.11960/2023

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